

UNITED STATES DISTRICT COURT  
EASTERN DISTRICT OF MICHIGAN  
SOUTHERN DIVISION

---

LEAGUE OF WOMEN VOTERS OF  
MICHIGAN, ROGER J. BRDAK,  
FREDERICK C. DURHAL, JR., JACK E.  
ELLIS, DONNA E. FARRIS, WILLIAM  
"BILL" J. GRASHA, ROSA L.  
HOLLIDAY, DIANA L. KETOLA, JON  
"JACK" G. LASALLE, RICHARD "DICK"  
W. LONG, LORENZO RIVERA and  
RASHIDA H. TLAIB,

Case No. 17-CV-14148

Hon. Eric L. Clay  
Hon. Denise Page Hood  
Hon. Gordon J. Quist

Plaintiffs,

-vs-

RUTH JOHNSON, in her official  
capacity as Michigan Secretary of  
State,

Defendant.

---

Deposition of KENNETH R. MAYER, Ph.D.,  
taken at the instance of the Defendant, under and  
pursuant to the Federal Rules of Civil Procedure, before  
Tammy L. Uhl, RPR, CRR, CRC, a Notary Public in and for  
the State of Wisconsin, at Quarles & Brady LLP,  
33 East Main Street, Suite 900, Madison, Wisconsin, on  
August 1, 2018, commencing at 9:27 a.m. and concluding at  
3:40 p.m.

For The **Record** Inc.

Excellence In Court Reporting

A P P E A R A N C E S

FAEGRE BAKER DANIELS LLP, by  
MR. JOSEPH H. YEAGER, JR. and MR. KEVIN M. TONER,  
300 N. Meridian Street, Suite 2700,  
Indianapolis, Indiana 46204-1750,  
appeared on behalf of the Plaintiffs.

JONES DAY, by  
MR. MICHAEL A. CARVIN,  
51 Louisiana Avenue, N.W.,  
Washington, D.C. 20001-2113,  
appeared on behalf of the Defendant.

I N D E X

Examination: Page  
By Mr. Carvin 4

Exhibits Identified: Page

1 Evaluation of Michigan Congressional and 5  
State Legislative District Plans by  
Kenneth R. Mayer, Ph.D., dated June 1, 2018

2 *The University of Chicago Law Review* 119  
article titled *Partisan Gerrymandering and*  
the *Efficiency Gap*

Requests: Page

1 Files sent from Professor Chen to Professor 159  
Mayer

(The original exhibits were attached to the original  
transcript and PDFs were provided to counsel)

(The original transcript was filed with  
Attorney Peter H. Ellsworth)

1 KENNETH R. MAYER, Ph.D., called as  
2 a witness, being first duly sworn, testified  
3 on oath as follows:

4 EXAMINATION

09:27AM

5 BY MR. CARVIN:

6 Q Good morning, Professor Mayer.

7 A Good morning.

8 Q Have you had your deposition taken before?

9 A Yes.

09:27AM

10 Q How many times?

11 A Probably ten.

12 Q And has that always been in an expert witness  
13 capacity?

14 A Yes.

09:27AM

15 Q Okay. So you know how this works. I'll just go  
16 through a couple of preliminaries. You're not  
17 under any medication or any other reason that you  
18 can't testify fully and truthfully today; is that  
19 correct?

09:27AM

20 A That's correct.

21 Q And because the court reporter -- I'm going to  
22 need verbal responses from you, either yes or no,  
23 rather than nodding your head. Do you understand  
24 that?

09:27AM

25 A I understand.

1 number in a specific article.

2 Q No. Just specific number generally?

3 MR. YAEGER: Objection. Vague and  
4 ambiguous.

10:22AM

5 A I mean, I can't tell you specifically whether the  
6 advantage is 4.5 or 5.3, but it is positive. It  
7 is correct to say that incumbents -- I would say  
8 not usually. They almost always win when they run  
9 for reelection.

10:23AM

10 Q And competitive districts are generally viewed as  
11 beneficial?

12 A That depends on who you ask.

13 Q I'm asking your opinion.

10:23AM

14 A I think generally speaking a district that is  
15 competitive, those are generally considered to be  
16 normatively good things.

10:24AM

17 Q All right. Let's turn to that specific issue, I  
18 guess, at this point. If you could turn to page 9  
19 of your report. I'm going to start reading. This  
20 is the second -- third full paragraph on page 9.

10:24AM

21 *The primary effect of gerrymandering is that*  
22 *it violates both principles. It disrupts the*  
23 *relationship between the number of votes a party*  
24 *receives and the number of seats it wins, and*  
25 *violates the core democratic principle that the*

1 A I think that's incorrect. As we've talked about  
2 before, the baseline gives you the starting point.

3 Q Right. And now I'm asking you about the end  
4 point. In the real word, have you made any  
11:51AM 5 predictions or done any analysis with any of these  
6 standard errors of measure about how many seats  
7 democrats are likely to win in the 2018 or 2020  
8 elections in the state house anywhere in your  
9 report?

11:51AM 10 A In terms of a forecast, specific forecast of  
11 district level outcomes, no.

12 Q Okay. And in terms of a general forecast for  
13 statewide voting, you haven't made a prediction  
14 with a standard error of measure about what their  
11:52AM 15 statewide voting percentage will be in the state  
16 house elections in 2018 or 2020; is that correct?

17 A That's correct.

18 Q And the answer is the same for both state senate  
19 and congress?

11:52AM 20 A That's correct.

21 Q So you're saying it's widely accepted in the  
22 political science community not to use endogenous  
23 races to assess or predict elections outcomes?

24 A Again, it depends. When I was using the term,  
11:52AM 25 again, my recollection is that it was a

1 right?

2 A That's the conclusion, yes.

3 Q And that's the correct conclusion. And the reason  
4 is pretty obvious, isn't it? Do you know what the  
02:38PM 5 efficiency gap is for a 51-49 district? Haven't  
6 you wasted 49 votes if you lose 51-49?

7 MR. YAEGER: Objection.

8 Q And you only wasted 1 percent of votes if you --

9 A So the efficiency gap is not calculated for a  
02:39PM 10 single district. The efficiency gap is calculated  
11 for a plan.

12 Q Maybe we can answer the question. What would the  
13 efficiency gap be for a 51 to 49 district?

14 A Well, the number --

02:39PM 15 MR. YAEGER: I object to your  
16 characterization. He did answer the  
17 question. I'm going to object that the  
18 question makes no sense as he's explained.  
19 You may answer.

02:39PM 20 A So the number of wasted votes would change from  
21 essentially 1 to 49.

22 Q So it would be a 48 percent efficiency gap. A  
23 huge efficiency gap for that district?

24 A An efficiency gap is not calculated for a single  
02:39PM 25 district. An efficiency gap is calculated for a

STATE OF WISCONSIN )  
 ) ss.  
COUNTY OF DANE )

I, Tammy L. Uhl, Certified Realtime Reporter and Notary Public in and for the State of Wisconsin, do hereby certify that the foregoing deposition of KENNETH R. MAYER, Ph.D. was taken before me on August 1, 2018, and reduced to writing by me, a professional court reporter and disinterested person, approved by all parties in interest and thereafter converted to typewriting using computer-aided transcription.

I further certify that I am not related to nor an employee of counsel or any of the parties to the action, nor am I in any way financially interested in the outcome of this case.

IN WITNESS WHEREOF, I have hereunto set my hand and affixed my notarial seal of office at Madison, Wisconsin, this 2nd day of August, 2018.

*Tammy L. Uhl*

Notary Public, State of Wisconsin  
My Commission Expires 8/18/2020

For The **Record** Inc.  
Excellence In Court Reporting

Digitally signed by Sarah Pichette, Notary Public -  
Commission Expires 6/14/19  
DN: serialNumber=04q67488mf572spt, c=US,  
st=Wisconsin, l=Waunakee, o=For the Record, Inc.,  
cn=Sarah Pichette, Notary Public - Commission  
Expires 6/14/19  
Date: 2018.08.02 19:14:02 -05'00'

*S. Pichette*